

Silva - 12/17/2008

SHEET 1 PAGE 1

1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BASSEM KANDIL and FLORA :
KANDIL, his wife, : Case Number:
 : 06CV4701 (JAG)
 :
 Plaintiffs, :
 :
 V. :
 : CIVIL ACTION
 :
 POLICE OFFICER GARY :
YURKOVIC, POLICE OFFICER : Deposition of:
ANTHONY MARK ABODE, :
POLICE OFFICER WILLIAM : MARCIA L. SILVA
C. OELS, III, SERGEANT :
WILLIAM OELS, CHIEF OF :
POLICE, CITY OF NEW :
BRUNSWICK, CITY OF NEW :
BRUNSWICK POLICE :
DEPARTMENT, MIDDLESEX :
COUNTY PROSECUTOR'S :
OFFICE, MIDDLESEX COUNTY :
CORRECTIONAL FACILITY, :
JOHN DOE SUPERVISING :
OFFICERS 1-10, JOHN DOES :
1-10, ABC CORPS. 1-10, :
 :
 Defendants. :
 :
X-----X

TRANSCRIPT of the stenographic
notes of the proceedings in the above-entitled
matter, as taken by and before TRACY LYNN NEILSON,
License No. 30X100202400, a Certified Court Reporter
and Notary Public of the State of New Jersey, held
at the offices of HOAGLAND, LONGO, MORAN, DUNST &
DOUKAS, 40 Paterson Street, New Brunswick, New
Jersey, on Wednesday, December 17, 2008, commencing
at 10:40 in the forenoon.

PAGE 3

3

A P P E A R A N C E S (continued):

HOAGLAND, LONGO, MORAN, DUNST, & DOUKAS, LLP
Attorneys for the Defendants, Sergeant William Oels,
Chief of Police, City of New Brunswick, City of New
Brunswick Police Department
40 Paterson Street
P.O. Box 480
New Brunswick, New Jersey 08903
By: SUSAN K. O'CONNOR, ESQUIRE

BENJAMIN D. LEIBOWITZ, ESQUIRE
DEPUTY COUNTY COUNSEL, COUNTY OF MIDDLESEX
Attorneys for the Defendant, Middlesex County
Prosecutor's Office
County Administration Building
John F. Kennedy Square - Room 230
New Brunswick, New Jersey 08901

PAGE 2

2

A P P E A R A N C E S:

NUSBAUM, STEIN, GOLDSTEIN, BRONSTEIN & KRON
Attorneys for the Plaintiffs, Bassem Kandil
and Flora Kandil
20 Commerce Boulevard
Succasunna, New Jersey 07876
By: SUSAN BIELANOWSKI REED, ESQUIRE

DWYER, CONNELL & LISBONA
Attorneys for the Defendant, Police Officer
Gary Yurkovic
100 Passaic Avenue
Fairfield, New Jersey 07004
By: WILLIAM T. CONNELL, ESQUIRE

GOLDEN, ROTHSCHILD, SPAGNOLA, LUNDELL,
LEVITT & BOYLAN, P.C.
Attorneys for the Defendant, Police Officer
Anthony Abode, Jr.
1011 Route 22 West, Suite 300
P.O. Box 6881
Bridgewater, New Jersey 08807
By: JEFFREY S. BELL, ESQUIRE

THE STONE LAW GROUP
Attorneys for the Defendant, Police Officer
William C. Oels, III
20 Glenview Drive
Warren, New Jersey 07059
By: MICHAEL JOHN STONE, ESQUIRE

LAWRENCE Y. BITTERMAN, ESQUIRE
Attorney for the Defendants, Police Officer
William C. Oels, III and Police Officer
Gary Yurkovic regarding punitive damages
247 Livingston Avenue
New Brunswick, New Jersey 08901

PAGE 4

4

I N D E X O F W I T N E S S E S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
MARCIA L. SILVA				
By Ms. O'Connor	6, 58		110	
By Mr. Bitterman	57			
By Ms. Reed	66		111	
By Mr. Connell	93			
By Mr. Bell	110			

Silva - 12/17/2008

SHEET 5 PAGE 17

M. Silva - direct - Ms. O'Connor 17

1 name of Pam, a female by the name of Lindsey; I
 2 believe that there was a recorded conversation with
 3 one of those women, I don't recall which one; and
 4 there may have been some statements or some
 5 information from other witnesses other than those
 6 two girls, but I remember the two females.
 7 Q After court on September 22nd, 2005,
 8 did you review your file to determine whether or not
 9 you had received that discovery from Defense Counsel
 10 prior to September 22nd, 2005?
 11 A Meaning did I look in the file to see if it
 12 was already in there?
 13 Q Correct.
 14 A I don't recall doing that, no.
 15 Q Okay. Was this discovery new that was
 16 handed to you on September 22nd, 2005?
 17 A Yes, I believe so.
 18 Q Once you received that discovery on
 19 September 22nd, 2005, and had the opportunity to
 20 review it, did you have any conversations with
 21 anyone from the Middlesex County Prosecutor's Office
 22 concerning that discovery?
 23 A Yes.
 24 Q Who did you have conversations with?
 25 A Ron Abramowitz.

PAGE 18

M. Silva - direct - Ms. O'Connor 18

1 Q And can you tell me when you spoke with
 2 Mr. Abramowitz concerning that discovery?
 3 A September 22nd -- September 27th of 2005.
 4 Q Okay.
 5 A Five days later.
 6 Q And what was your purpose for going to
 7 see Assistant Prosecutor Abramowitz on September
 8 27th, 2005?
 9 A I had a chance to review the file. I had
 10 seen Assistant Prosecutor Pilchford's notes in
 11 there, I had seen that there was some requests or
 12 some discussion or some issue about these two female
 13 witnesses being there, I had seen that there were
 14 conversations with the officers regarding this, and
 15 I now had discovery which seemed to indicate, from
 16 Defense Counsel, that one of these girls may have
 17 been there or not been there.
 18 And my question -- my issue in going to Ron
 19 was that because of his position in our office of
 20 dealing with "special" prosecutions or special -- or
 21 anything involving IA or anything of that nature,
 22 and there was some reference in here to an IA that
 23 may or may not have been filed, I went to talk to
 24 Ron about this discovery and to discuss it with him,
 25 is there an issue here, is this a concern.

PAGE 19

M. Silva - direct - Ms. O'Connor 19

1 Q And did you provide Mr. Abramowitz with
 2 the discovery?
 3 A I don't know if I actually handed it to him
 4 or if I, as we often do, stood next to his desk,
 5 opened it up and flipped through and showed him
 6 where I was referring to or what I thought was
 7 important in it.
 8 Q As a result of that discussion with
 9 Mr. Abramowitz, did he direct you to do anything?
 10 A I don't recall if he directed me to do it. I
 11 called the officer, one of the officers, but I don't
 12 know if that was at the direction of Ron, or if it
 13 was...
 14 It may have been.
 15 Q Did Mr. Abramowitz tell you anything
 16 after he reviewed the discovery with you?
 17 A He said there doesn't seem to be a problem
 18 here, continue on with the case, or something to
 19 that effect.
 20 Q Okay. When is the next time that you
 21 had to appear in court?
 22 A October 18th of 2005.
 23 Q Prior to that time, did you speak with
 24 anyone else in the Prosecutor's -- strike that.
 25 Between September 22nd, 2005, when you

PAGE 20

M. Silva - direct - Ms. O'Connor 20

1 first received this information, and October 18,
 2 2005, when you next had to appear in court, did you
 3 speak with anyone else in the Prosecutor's Office
 4 other than Mr. Abramowitz relative to this new
 5 discovery?
 6 A I don't believe so.
 7 Q Okay. Did you speak with the officer
 8 between September 22nd, 2005, and October 18, 2005?
 9 A Yes, I did.
 10 Q What officer did you speak with?
 11 A Officer Yurkovic.
 12 Q And did you learn any information from
 13 Officer Yurkovic which gave you pause in terms of
 14 determining whether there was a problem with this
 15 case?
 16 A No.
 17 Q Now, on October 18th, 2005, you again
 18 appeared before Judge Gelade?
 19 A No.
 20 Q Who did you appear before on October
 21 18th, 2005?
 22 A Judge DeVesa.
 23 Q So although you were still assigned to
 24 Judge Gelade's trial team, you appeared before Ju-
 25 DeVesa on this case?

Silva - 12/17/2008

<p>SHEET 11 PAGE 41</p> <p>M. Silva - direct - Ms. O'Connor 41</p> <p>1 Q Okay. And tell me the nature, please,</p> <p>2 of that discussion.</p> <p>3 A I needed Julie's permission to basically --</p> <p>4 well, for many reasons, but, number one, because it</p> <p>5 was a second degree, and, number two, because the</p> <p>6 program had rejected her -- him, and I needed her</p> <p>7 permission to override it.</p> <p>8 So I went to Julie, and I spoke to her about</p> <p>9 the case, told her the facts, told her the discovery</p> <p>0 that I had been given by the defense about this</p> <p>1 issue of the two girls and were they there and</p> <p>2 weren't they there and that kind of thing, about the</p> <p>3 co-defendant being in PTI. I told her that the</p> <p>4 victims were okay with PTI. And I told her about</p> <p>5 the release that the defendant was going to execute.</p> <p>6 Q And did you tell her that the release</p> <p>7 dismissal agreement was Judge DeVesa's idea?</p> <p>8 A I don't recall if I told her that.</p> <p>9 Q Okay. Did you tell her that the</p> <p>0 defendant, the criminal defendant, had indicated</p> <p>1 acquiescence with Judge DeVesa's recommendations?</p> <p>2 A Well, of course, 'cause that's why I was</p> <p>3 there with it.</p> <p>4 Q Okay. And did Julia McClure provide</p> <p>5 you with the authority to have Mr. Kandil enter the</p>	<p>PAGE 43</p> <p>M. Silva - direct - Ms. O'Connor 43</p> <p>1 November 9th, 2005?</p> <p>2 A Yes, Terrie Beckasee [phonetic spelling],</p> <p>3 who's the judge's team leader, called me November</p> <p>4 7th or 8th or somewhere around there to ask me if --</p> <p>5 what was going on with the PTI, were we gonna let</p> <p>6 him in.</p> <p>7 I said yes, we were, I had gotten Julie's</p> <p>8 approval.</p> <p>9 She said can you have your office do the</p> <p>10 paperwork and bring it over with you on the 9th so</p> <p>11 we can enroll him on that date, and I said yes.</p> <p>12 Q And then did you direct someone in your</p> <p>13 office to perform the paperwork that was necessary</p> <p>14 for the resolution of this criminal matter?</p> <p>15 A Yes, Barbara Kelly.</p> <p>16 Q Okay. And she's a secretary in your</p> <p>17 office?</p> <p>18 A She was a clerk at the time. She doesn't</p> <p>19 work there anymore.</p> <p>20 MS. O'CONNOR: DMS-3, please.</p> <p>21 [Exhibit DMS-3, Order of</p> <p>22 Postponement for PTI and Conditions of PTI,</p> <p>23 two pages, marked for identification.]</p> <p>24 Q Ms. Silva, I am going to show you a</p> <p>25 two-page document, which, of course, is not stapled,</p>
<p>PAGE 42</p> <p>M. Silva - direct - Ms. O'Connor 42</p> <p>1 PTI program?</p> <p>2 A Yes.</p> <p>3 Q Your next conference was to occur on</p> <p>4 November 9th?</p> <p>5 A I believe it was originally scheduled for</p> <p>6 November 18th, but it was pushed up.</p> <p>7 Q And do you know why it was pushed up?</p> <p>8 A I have no idea. I don't recall.</p> <p>9 Q Okay. Did you have any discussions</p> <p>0 with anyone outside the Middlesex County</p> <p>1 Prosecutor's Office after your discussion with</p> <p>2 Ms. McClure concerning the PTI application?</p> <p>3 A I'm sorry?</p> <p>4 Q Did you have any discussions with</p> <p>5 anyone else outside of the Middlesex County</p> <p>6 Prosecutor's Office after you talked with Julie?</p> <p>7 A No. And just to go - I'm sorry - just to go</p> <p>8 back, it was scheduled for November 9th because the</p> <p>9 parties weren't available on the 18th. So that's</p> <p>0 why it was moved up.</p> <p>1 Q Okay. And you referred to --</p> <p>2 A Yeah, I referred to the transcript of October</p> <p>3 18th.</p> <p>4 Q Okay. Did you have any discussions</p> <p>5 with Chambers, Judge DeVesa's Chambers, before</p>	<p>PAGE 44</p> <p>M. Silva - direct - Ms. O'Connor 44</p> <p>1 marked DMS-3 and ask if you could identify that for</p> <p>2 us, please.</p> <p>3 A Yes, the first page -- well, I believe the</p> <p>4 whole thing isn't -- well, I don't know if the whole</p> <p>5 thing is supposed to be together, but the first page</p> <p>6 is an Order of Postponement for PTI, and the second</p> <p>7 page is Conditions of PTI, supervision, standard</p> <p>8 conditions.</p> <p>9 Q The first page of that document, is</p> <p>10 that what you had Ms. Kelly of your office prepare</p> <p>11 in preparation for the November 9th, 2005</p> <p>12 conference?</p> <p>13 A Yes.</p> <p>14 Q Okay. And as part of that document,</p> <p>15 under Comments, it indicates, "Defendant to execute</p> <p>16 a hold harmless agreement against all officers</p> <p>17 involved, City of New Brunswick, and MCPO," correct?</p> <p>18 A That's correct.</p> <p>19 Q Okay. And that would have then been a</p> <p>20 condition of PTI, correct?</p> <p>21 A That's correct.</p> <p>22 Q Okay. Is there anywhere on that form,</p> <p>23 other than of course the comment section, where you</p> <p>24 could put in as a condition of PTI the requirement</p> <p>25 to have a hold harmless agreement?</p>

Silva - 12/17/2008

SHEET 29 PAGE 113

M. Silva - redirect - Ms. Reed 113

1 Mr. Kobin, or not?
 2 Are you asking her whether or not
 3 you ever used that term, release and hold
 4 harmless agreement, period?
 5 MS. REED: No, because she's
 6 already testified regarding that.
 7 Q Can you answer the question as asked?
 8 MR. LEIBOWITZ: Object to the
 9 form.

10 **A You used those words with regards to talking**
 11 **to Mr. Kobin.**

12 Q Thank you.
 13 MS. REED: That's all I have.
 14 (Deposition adjourned at 12:39 p.m.)
 15 (Exhibits retained by Counsel.)
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

PAGE 114

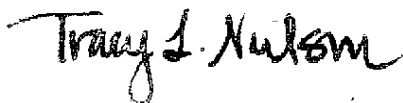
114

C E R T I F I C A T E O F O F F I C E R

I, TRACY LYNN NEILSON, a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination the witness was duly sworn by me.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcription of the testimony as taken stenographically by and before me on the date, time, and place aforementioned.

I DO FURTHER CERTIFY that I am neither a relative, employee, attorney, nor counsel to any parties involved; that I am neither related to nor employed by any such attorney or counsel; and that I am not financially interested in the outcome of this action.



TRACY LYNN NEILSON, C.S.R., C.R.R.
 A NOTARY PUBLIC OF THE STATE OF NEW JERSEY
 C.S.R. License No. 30XI00202400
 C.R.R. License No. 30XR00011000